PENTADBIR TANAH SEREMBAN v. INISIATIF JAYA SDN BHD & ANOTHER APPEAL

COURT OF APPEAL, PUTRAJAYA
BALIA YUSOF WAHI JCA
HAMID SULTAN ABU BACKER JCA
BADARIAH SAHAMID JCA
[CIVIL APPEALS NO: N-01-33-01-2014 & N-01-34-01-2014]
24 MARCH 2017

LAND LAW: *Acquisition of land – Compensation – Inadequacy – Landowner's objection to compensation via submission of Form N to land administrator – Failure to state claim for severance and injurious affection – Whether requirement to expressly state grounds of objection in Form N a mandatory requirement – Whether landowner entitled to claim for severance and injurious affection – Whether High Court erred in awarding compensation for severance and injurious affection when these issues had not been raised in Form N – Land Acquisition Act 1960, s. 38(2)*

WORDS & PHRASES: *'state fully' – Land Acquisition Act 1960, s. 38(2) – Whether 'shall' precedes requirement to 'state fully' – Whether grounds of any objection to award of compensation must be stated expressly and in specific terms in Form N – Whether a mandatory requirement*

This was an appeal against the decision of the High Court in respect of two land reference cases that were heard together due to the close proximity of the lands in terms of site and location. The two land reference cases which were in respect of the acquisition of Lot 4412 and Lot 1515 ('the subject lots') arose from an objection filed by the respondent landowner/applicant in respect of the inadequacy of compensation paid by the appellant. The subject lots were part of the Sungai Beranang Estate comprising five lots of agricultural land with a total area of approximately 516 hectares. On 24 November 2011, the State Government of Negeri Sembilan had gazetted for acquisition of the subject lots in accordance with sub-s. 3(1)(a) of the Land Acquisition Act 1960 ('the Act'). Pursuant to the above, the land administrator had conducted an enquiry under s. 12 of the Act. To arrive at the present market value, the private valuer adopted the comparison approach, whereby the value of the property is determined by comparing it with recent sales and/or listings of similar properties in the vicinity. The private valuer had also included in the report compensation for severance as well as injurious affection arising from loss of direct access to the trunk road and consequentially, loss of development potential for a portion of the subject lots. Premised on the foregoing, the private valuer was of the opinion that the present market value of the subject lots free from all encumbrances and with vacant possession was RM12,087,349. The Government valuer, however, did not consider that an award ought to be given for severance and

injurious affection as a result of the acquisition as the remainder of the lots after acquisition could still operate as estate land in accordance with s. 214A of the National Land Code. At the end of the enquiry, the land administrator awarded the amount of RM160,000 a hectare for the subject lots with a total compensation award of RM858,960.

Dissatisfied with the valuation of the subject lots and the amount of compensation awarded, the respondent landowners recorded their objection *via* submission of Form N with the land administrator to be referred to the High Court for consideration. The High Court made an order for additional compensation for the lands to be paid to the respondent landowner amounting to RM505,528, for total compensation for severance at RM2,599,318 and for balance of Lot 4212 portion A, of 111,9523 hectares at 5% reduced for injurious affection of the market rate amounting to RM1,119,523. Therefore, total compensation due to the respondent landowner was RM4,224,369. Hence, the appellant appealed. The issue that was raised herein was whether the applicant could raise the objection in respect of severance and injurious affection at the land reference stage when the same was not expressly stated in the applicant's Form N. In other words, was the requirement to expressly state the grounds of objection in Form N a mandatory requirement. Another point of law raised was whether the High Court Judge had erred in allowing the respondent landowners to raise a new issue without prior leave of the court, as this was contrary to sub-s. 38(2) of the Act.

Held (allowing appeal)
Per Badariah Sahamid JCA (for the majority):

(1) The requirement stipulated in s. 38(2) of the Act is mandatory by the usage of the word 'shall' which precedes the requirement to 'state fully'. The word 'fully', being a non-technical term must be understood in its natural and ordinary meaning. The *Concise English Dictionary* interprets the word 'fully' to mean 'completely or entirely, to the fullest extent.' Thus, s. 38(2) of the Act requires that the grounds of any objection to an award must be stated expressly and in specific terms in Form N in order to comply with the abovementioned requirement. In this case, the only ground of objection to the award stated in Form N was that the amount of compensation did not reflect the current market value of the subject lots. There was no specific mention of severance or injurious affection in Form N. (paras 59, 60 & 62)

(2) There was clearly no merit in the applicant's submission that the prior leave required by s. 38(2) of the Act may be deemed to have been obtained by the conduct of the High Court Judge and assessors in proceeding to hear the new objections of the applicant. The applicant was not entitled to raise a claim for severance and injurious affection. The decision of the High Court Judge was thus set aside. (paras 66 & 67)

Per Hamid Sultan Abu Backer (dissenting):

(1) There was no reason why a lay public landowner who is seeking compensation for land acquisition has to state terminologies or phrases or methodologies *etc* which falls within the domain of experts, jurists, tribunals, courts *etc* when there is no strict requirement in the Land Acquisition Act 1960 in particular Form N to state the phrase 'severance and injurious affection.' The grounds of complaint in Form N were sufficient to secure a fair compensation. (paras 77 & 78)

(2) There was one valuation report by the private valuer as well as the Government valuer. The private valuer had taken into account the issue relating to 'severance and injurious affection.' The Government valuer had dealt with it. The matter was also argued before the land administrator and it was an issue at the inquiry stage. The argument on this issue was thus purely technical. (para 84)

Bahasa Malaysia *Headnotes*

Ini adalah rayuan terhadap keputusan Mahkamah Tinggi berhubungan dua kes rujukan tanah yang didengar bersama disebabkan kedudukan kedua-dua tanah itu yang berdekatan dari segi tapak dan lokasi. Dua kes rujukan tanah itu adalah berhubungan dengan pengambilan Lot 4412 dan Lot 1515 ('tanah-tanah tersebut') yang berbangkit daripada bantahan yang difailkan oleh responden pemilik tanah/pemohon berkenaan ketidakcukupan pampasan yang dibayar oleh perayu. Tanah-tanah tersebut adalah sebahagian Estet Sungai Beranang yang terdiri daripada lima tanah pertanian dengan jumlah kawasan 516 hektar. Pada 24 November 2011, Kerajaan Negeri Sembilan telah mewartakan untuk pengambilan tanah-tanah tersebut sejajar dengan sub-s. 3(1)(a) Akta Pengambilan Tanah 1960 ('Akta'). Berikutan itu, pentadbir tanah telah menjalankan penyelidikan bawah s. 12 Akta. Untuk mencapai nilai pasaran semasa, penilai swasta mengamalkan pendekatan perbandingan, iaitu nilai tanah ditentukan dengan membandingkannya dengan jualan atau penyenaraian tanah yang mempunyai ciri-ciri serupa sekitar itu. Penilai swasta juga memasukkan laporan pampasan untuk pemecahan tanah dan berasaskan kesan mudarat berbangkit dari kehilangan akses langsung ke jalan raya dan akibatnya, kehilangan potensi pembangunan untuk sebahagian daripada tanah-tanah tersebut. Berdasarkan itu, penilai swasta berpendapat tanah-tanah tersebut bebas daripada semua halangan dan dengan milikan kosong adalah RM12,087,349. Penilai Kerajaan, walau bagaimanapun, tidak setuju bahawa award harus diberikan dengan pampasan pemecahan tanah dan berasaskan kesan mudarat akibat pengambilan tersebut kerana baki lot-lot selepas pengambilan tanah masih boleh beroperasi sebagai tanah estet bawah s. 214A Kanun Tanah Negara. Di akhir penyelidikan, pentadbir tanah mengawardkan jumlah RM160,000 satu hektar untuk tanah-tanah tersebut dengan jumlah pampasan sepenuhnya berjumlah RM858,960.

Tidak berpuas hati dengan penilaian tanah-tanah tersebut dan jumlah pampasan yang diberi, responden pemilik tanah membantah melalui penyerahan Borang N pada pentadbir tanah untuk dirujuk kepada Mahkamah Tinggi. Mahkamah Tinggi membuat perintah untuk pampasan tambahan berjumlah RM505,528 untuk jumlah pampasan bagi pemecahan tanah pada RM2,599,318 dan untuk baki Lot 4212 bahagian A, daripada 111,9523 hektar pada 5% dikurangkan untuk pampasan berasaskan kesan mudarat daripada kadar pasaran berjumlah RM1,119,523. Oleh itu, jumlah keseluruhan pampasan kepada responden pemilik tanah adalah RM4,224,369. Oleh itu, perayu merayu. Isu yang timbul adalah sama ada perayu boleh membangkitkan bantahan terhadap pampasan pemecahan tanah dan berasaskan kesan mudarat pada peringkat rujukan tanah apabila yang sama tidak dinyatakan dengan khususnya dalam Borang N pemohon. Dalam erti kata lain, adakah keperluan menyatakan dengan khususnya alasan-alasan bantahan dalam Borang N satu keperluan mandatori. Satu lagi perkara undang-undang yang dibangkitkan adalah sama ada Hakim Mahkamah Tinggi terkhilaf apabila membenarkan responden pemilik tanah membangkitkan isu baru tanpa kebenaran mahkamah, kerana ini bertentangan dengan sub-s. 38(2) Akta.

Diputuskan (membenarkan rayuan)
Oleh Badariah Sahamid HMR (keputusan majoriti):

(1) Keperluan yang ditetapkan dalam s. 38(2) Akta adalah mandatori melalui penggunaan perkataan 'shall' yang mendahului keperluan 'state fully'. Perkataan 'fully', sebagai satu istilah tidak teknikal harus difahamkan maksud semula jadinya. *Kamus Bahasa Inggeris Concise* mentafsirkan perkataan 'fully' bermakna 'completely or entirely, to the fullest extent.' Oleh itu, s. 38(2) Akta memerlukan alasan-alasan apa-apa bantahan award harus dinyatakan khususnya dan dalam syarat spesifik dalam Borang N bagi mematuhi keperluan tersebut di atas. Dalam kes ini, satu-satunya alasan bantahan award yang dinyatakan dalam Borang N adalah jumlah pampasan tidak menggambarkan nilai pasaran semasa tanah-tanah tersebut. Tiada sebutan khusus berkenaan pampasan pemecahan tanah dan berasaskan kesan mudarat.

(2) Dengan jelasnya, tiada merit dalam hujahan pemohon bahawa kebenaran yang diperlukan oleh s. 38(2) Akta telah pun diperolehi melalui tindakan Hakim Mahkamah Tinggi dan pentaksir-pentaksir dalam mendengar bantahan-bantahan baru pemohon. Pemohon tidak mempunyai hak membangkitkan tuntutan pampasan pemecahan tanah dan berasaskan kesan mudarat. Keputusan Hakim Mahkamah Tinggi oleh itu diketepikan.

Oleh Hamid Sultan Abu Backer HMR (menentang):

(1) Tiada sebab mengapa pemilik tanah yang sedang menuntut pampasan untuk pengambilan tanah perlu menyatakan terminologi, frasa atau metodologi dan lain-lain yang terangkum dalam domain pakar, pakar undang-undang, tribunal, mahkamah dan lain-lain apabila tiada keperluan ketat dalam Akta Pengambilan Tanah 1960 khususnya Borang N untuk menyatakan frasa 'severance and injurious affection'. Alasan aduan dalam Borang N adalah memadai untuk menjaminkan pampasan yang adil.

(2) Terdapat satu laporan penilaian oleh penilai swasta dan juga penilai Kerajaan. Penilai swasta telah mengambil kira isu berhubungan 'severance and injurious affection'. Penilai swasta telah menanganinya. Perkara itu telah dipertikaikan di hadapan pentadbir tanah dan ia juga isu pada peringkat inkuiri. Hujahan atas isu ini adalah hujahan teknikal semata-mata.

Case(s) referred to:

Calamas Sdn Bhd v. Pentadbir Tanah Batang Padang [2011] 5 CLJ 125 FC ***(refd)***
Chung Ngiuk Chang & Ors v. The Superintendent [2008] 1 LNS 239 HC ***(refd)***
Damansara Jaya Sdn Bhd v. Pemungut Hasil Tanah Petaling [1992] 4 CLJ 2208; [1992] 1 CLJ (Rep) 52 SC ***(refd)***
Hajjah Halimah Hussain & Anor v. Collector of Land Revenue, Kuantan [1981] 2 MLJ 12 ***(refd)***
Jerry WA Dusing & Anor v. Majlis Agama Islam Wilayah Persekutuan (MAIWP) & Ors [2017] 1 CLJ 133 CA ***(refd)***
Malakoff Bhd & Anor v. Pentadbir Tanah, Kedah [2004] 1 CLJ 189 FC ***(refd)***
PP v. Tan Tatt Eek & Other Appeals [2005] 1 CLJ 713 FC ***(refd)***
Rashida Bibi & Ors v. Pentadbir Tanah Wilayah [2007] 1 LNS 363 HC ***(refd)***
Sin Yee Estate Sdn Bhd v. Pentadbir Tanah Daerah Kinta [2005] 4 CLJ 653 FC ***(refd)***
Superintendent of Lands and Surveys, Sarawak v. Aik Hoe & Co Ltd [1966] 1 LNS 188 FC ***(refd)***
Syed Hussain Syed Junid & Ors v. Pentadbir Tanah Negeri Perlis And Another Appeal [2013] 9 CLJ 152 FC ***(refd)***
Vyricherla Narayana Gajapatiraju v. The Revenue Divisional Officer, Vizagapatam [1939] AC 302 ***(refd)***

Legislation referred to:

Land Acquisition Act 1960, ss. 3(1)(a), 12, 38(2), 39(1), 40D(3), 49(1)
National Land Code, s. 214A

For the appellant - Iskandar Ali Dewa & Rozaimah Adnan; SFCs
For the respondent - Indran Kumaraguru; M/s Krishna Dallumah, Manian & Indran

[Editor's note: Appeal from High Court, Seremban; Land Reference No: 15-20-07-2013 (overruled).]

Reported by Suhainah Wahiduddin

JUDGMENT

Badariah Sahamid JCA:

Introduction

[1] Parties will be referred to as they were in proceedings before the High Court.

[2] This is an appeal against the decision of the learned High Court Judge in Seremban delivered on 17 December 2013, in respect of two land reference cases that were heard together due to the close proximity of the lands in terms of site and location.

[3] The two land reference cases were in respect of the acquisition of Lot 4412 and Lot 1515 ("the subject lots").

[4] The two land reference cases arose from an objection filed by the applicant/landowner in respect of the inadequacy of compensation paid by the respondent to the applicant.

Background Facts

[5] A summary of the background facts is derived from the grounds of judgment of the learned High Court Judge, with suitable modifications.

[6] The subject lots are part of the Sungai Beranang Estate which comprises five lots of agricultural land with a total area of approximately 516 hectares (1,275 acres).

[7] In respect of Lot 1515, the acquired area is 5.3685 hectares, (13.2657 acres) while in respect of Lot 4412, the acquired area is 7.2697 hectares (17.9636 acres).

[8] Both the subject lots are first-layer land and have frontage along their western boundaries onto the Broga-Mantin trunk road.

[9] At the time of inspection, the Sungai Beranang Estate ("the estate") is planted with oil palm and rubber trees.

[10] There are agricultural buildings within the estate, which includes a field office, storage buildings, smokehouses, workers' quarters, a Hindu temple, a surau, an estate manager's house and staff quarters.

[11] According to the private valuer's report, the estate is well served by a network of motorable laterite roads, field drains, culverts and small bridges. Maintenance of the estate is observed to be good.

[12] Public utilities such as water and electricity are connected to the subject lots.

[13] The subject lots are not stipulated for any specific use in the title documents. From the Rancangan Tempatan Daerah Seremban 2015, the subject lots are zoned for residential use.

[14] The subject lots have been described as having close proximity to two large developments ie,

(i) the Main Intake Electrical Station belonging to Tenaga Nasional Bhd.

(ii) a large township development called Bandar Akademia, a project of the Lion Group, consisting of mainly detached houses and vacant bungalow lots with a clubhouse and a public park.

[15] Other notable developments in the vicinity include University Nottingham of Malaysia, Taman Pelangi Semenyih, and Bandar Tasik Semenyih.

[16] On 24 November 2011, the State Government of Negeri Sembilan had gazetted for acquisition the subject lots in accordance with sub-s. 3(1)(a) of the Land Acquisition Act 1960 (Act 486).

[17] Pursuant to the above, the land administrator had conducted an enquiry under s. 12 of Act 486. The enquiry was attended by the following persons:

(a) Low Kim Hock, representative of the respondent;

(b) Tan Soon Sem, representative of the respondent;

(c) Ervinna Teo, representative of AmBank (M) Bhd.

(d) Othman bin Mamat, representative of Tenaga Nasional Bhd;

(e) Rosman bin Mokhtar, representative of Tenaga Nasional Bhd;

Valuation Of Subject Lots

The Private Valuer

[18] To arrive at the present market value of the subject lots, the private valuer adopted the comparison approach.

[19] Under this approach, the value of the property is determined by comparing it with recent sales and/or listings of similar properties in the vicinity, or if unavailable, within similar localities. As no two properties are identical, adjustments are made for differences in factors such as location, and physical characteristics.

[20] Accordingly, the private valuer compared the subject lots with Lot Nos. 1135 and 1137, which lots are part of the Tarun Estate, located near the Selangor/Negeri Sembilan state boundary. A compensation was offered by the land office in respect of a compulsory acquisition of the said lots on 17 August 2006.

[21] The private valuer had also included in the report compensation for severance as well as injurious affection arising from loss of direct access to the trunk road and consequentially, loss of development potential for a portion of the subject lots.

[22] The above severance and injurious affection would render the subject lots to suffer a diminution in value to the remaining property. The value reduction was estimated to be RM7,742,540.

[23] Premised on the foregoing, the private valuer is of the opinion that the present market value of the subject lots free from all encumbrances and with vacant possession is RM12,087,349 which comprises as follows:

(i) Acquired portion

Lot No.	Acquired Area		Value Per Acre		
1515	13.2657	x	RM130,000	=	RM1,724,541
4412	17.9636	x	RM130,000	=	RM2,335,268
Estate Manager's house					RM175,000
Staff Quarters					RM65,000
Fencing					RM15,000
(ii) Severance and Injurious Affection					RM7,742,540
(iv) Cost of valuation Report					RM25,000
(v) Landowner's travel and miscellaneous Expenses					RM5,000
			Total		**RM12,087,349**

The Government Valuer

[24] The Government valuer used as comparables, Lots 561, 966 and 3338.

[25] Lot 561 is uneven with hilly relief. It is located at the third layer Off KM 35.7 of the Kuala Lumpur-Seremban Highway whereby the zoning is residential.

[26] Lot 966 is uneven hilly relief. It is located at the second layer Off Jalan Sungai Jai-Lenggeng. The zoning is agricultural.

[27] Lot 3338 is rectangle in shape and of hilly terrain. It is situated at the first layer from Seremban-Lenggeng road. Zoning is agricultural.

[28] The Government valuer was of the view that the average valuation after considering the comparable lots of Lots 561, 966 and 3338 was between RM150,000-RM160,000 per hectare after considering the relief, size, location and time of the transaction of the respective lands used as comparables.

[29] The Government valuer was of the view that the reasonable valuation at the time it was gazetted for acquisition on 24 November 2011 after the necessary adjustments is RM160,000 per hectare.

[30] Hence, the Government valuation of the subject lots is as follows:

Lot No.	Acreage (hectares)	Value per hectare	Prevailing Market rate	Value of building	Total
1515	5.3685	RM160,000	RM858,960	i) Manager's House	RM1,058,960-RM120,000
				ii) Workers' quarters	RM6,500
				iii) Fencing & gate	RM15,000
4412	7.2697	RM160,000	RM1,163,153	Nil	RM1,163,152

[31] The Government valuer however, did not consider that an award ought to be given for severance and injurious affection as a result of the acquisition as the remainder of the lots after acquisition can still operate as estate land in accordance with s. 214A of the National Land Code.

[32] At the end of the enquiry, the land administrator had awarded the amount of RM160,000 a hectare for the subject lots with a total compensation award of RM858,960. The award was delivered to the respondent by Borang H.

[33] However, the respondent was dissatisfied with the valuation of the subject lots and the amount of compensation awarded and on 22 October 2012 accepted the award but recorded their objection *via* the submission of Borang N with the land administrator, to be referred to the High Court for consideration.

[34] The grounds stated in Borang N, abovementioned are as follows:

> 4. Alasan-alasan bantahan saya adalah seperti berikut:
>
> Jumlah pampasan yang diberi untuk tanah dan bangunan yang terlibat tidak menggambarkan nilai pasaran sebenar bagi tanah dan bangunan tersebut atau dibawah harga pasaran pada masa yang berkenaan (below market value at the material time).

Issues Before The High Court

[35] The primary issue before the High Court may be summarised as follows:

> Whether, the issue of inadequacy of compensation premised on severance and injurious affection can be raised at the land reference stage when:
>
> (i) it was not expressly stated in Borang N; and
>
> (ii) it had been raised before the land administrator and rejected.

Decision Of The High Court Judge Together With The Assessors

[36] The findings are stated as follows:

> The court is of the view that although it has not been stated expressly in Borang N that the objection is specifically to severance and IA (injurious affection), however, since it was raised before the Land Administrator and that has been refused, issue on severance and IA may be considered at the land reference stage.

[37] The learned High Court Judge, after hearing the matter, made an order in the following terms:

> A: additional compensation for the lands to be paid to the Applicant
>
> As follows:
>
> (i) An additional compensation of RM290,788 be made for Lot 4212.
>
> (ii) An additional compensation of RM214,740 to be made for Lot 1515.
>
> Total additional compensation to be paid to the Applicant is RM505,528.
>
> B: For severance
>
> (iii) For Lot 4412, balance land area as per JPPH report at page 7 of 185,8303 hectares at RM200,000 per hectare comes to RM1, 858,303
>
> (iv) For Lot 1515, balance land area as per JPPH report at page 7 of 74.1015 hectares at RM200,000 per hectare comes to RM741,015.
>
> Total compensation for severance is RM2,599,318.
>
> C: Injurious Affection (IA)
>
> Balance of Lot 4212 portion A, of 111,9523 hectares at 5% reduced for IA of the market rate amounting to RM1,119,523.

[38] Therefore, total compensation due to the applicant is RM4,224,369.

Grounds Of Appeal

[39] The respondent's grounds of appeal may be summarised as follows:

> 1. The learned High Court judge had erred in fact and law in awarding compensation for Severance and Injurious Affection of the subject lots when the issues were not raised by the Respondent at the enquiry before the Land Administrator on 28.06.2012.

2. The learned High Court judge had erred in fact and law in awarding compensation for Severance and Injurious Affection of the subject lots when the Respondent had not raised these issues in the Borang N, and this decision is contrary to sub-section 38(2) of Act 486.

3. The learned High Court judge had erred in allowing the Respondent to raise a new issue without prior leave of the court, and this was contrary to sub-section 38 (2) of the Act 486.

Applicant/Landowner's Submissions

[40] The thrust of learned counsel for the applicant's argument is premised on ss. 40D(3) and 49(1) of Act 486 which precludes any party from appealing against the award of compensation by the High Court and assessors.

[41] The relevant provisions abovementioned are reproduced below:

40. Decision of the Court on compensation.

(3) Any decision made under this section is final and there shall be no further appeal to a higher Court on the matter.

The above position is reinforced by section 49(1) which states:

49. Appeal from decision as to compensation

(1) Any person interested, including the Land Administrator and any person or corporation on whose behalf the proceedings were instituted pursuant to section 3 may appeal from a decision of the Court to the Court of Appeal and to the Federal Court:

Provided that where the decision comprises an award of compensation there shall be no appeal therefrom.

[42] Learned counsel for the applicant also referred us to *inter alia* two Federal Court decisions in support of the above contention.

[43] In the case of *Calamas Sdn Bhd v. Pentadbir Tanah Batang Padang* [2011] 5 CLJ 125, Hashim Yusoff FCJ had referred to the effect of the two sections abovementioned thus:

> It is trite law that courts must give effect to the clear provisions of the law. In the instant appeal, I do not see anything ambiguous in ss. 40D(3) and 49(1) of the Act. In view of this, I am of the view that the appellant is precluded from appealing against the order of compensation issued by the learned trial judge.

[44] The Federal Court in the recent case of *Syed Hussain Syed Junid & Ors v. Pentadbir Tanah Negeri Perlis* [2013] 9 CLJ 152, had held as follows:

> While s. 49(1) of the Act allows any interested person to appeal against the decision of the High Court to the Court of Appeal, s. 40D appears to have restricted the ambit of such an appeal. Section 40D(3) of the Act clearly provides that any decision as to the amount of compensation awarded shall be final and there shall be no further appeal to the higher court on the matter.

[45] Learned counsel for the applicant contends that ss. 40D(3) and 49(1) of Act 486, read together with both the Federal Court decisions abovementioned, and clearly precludes the respondent from appealing against the award of compensation by the learned High Court Judge and assessors.

[46] The respondent is attempting to circumvent the abovementioned provisions in Act 486 by disguising this appeal as a point of law, purportedly on the ground that severance and injurious affection were not raised by the applicant in Form N or in the enquiry proceedings before the land administrator.

[47] In response to the respondent's contention that the applicant did not state that the grounds of objection in Form N is in respect of the issues of severance and injurious affection, the applicant submits as follows.

[48] Form N is a standard form which is usually filled up by landowners who are laypersons and not familiar with legal principles. Form N merely states that the grounds of objection are in regard to the inadequacy of compensation which was deemed to be below the market value at the material time. This would cover the issues of severance and injurious affection.

[49] In any event, if prior leave of the court is required to raise new grounds of objection not stated in Form N, pursuant to s. 38(2) of Act 486, the learned High Court Judge in hearing the new objections is deemed to have impliedly given leave of the court pursuant to s. 38(2) abovementioned.

Respondent's Submissions

[50] The primary issue raised in this appeal is not the issue of compensation, which is clearly disallowed by s. 40D(3) and the proviso to s. 39(1) of the Land Acquisition Act 1960 as well as the Federal Court decisions of *Calamas Sdn Bhd* (*supra*) and *Syed Hussain Syed Junid & Ors v. Pentadbir Tanah Negeri Perlis (supra)*.

[51] The issue raised in this appeal is in respect of the following points of law ie:

> Whether the Applicant can raise the objection in respect of severance and injurious affection at the Land Reference stage when the same was not expressly stated in the Applicant's Borang N? In other words, is the requirement to expressly state the grounds of objection in Form N a mandatory requirement?
>
> Following from the above issue, another point of law raised in this appeal is in respect of section 38(2) of the Land Acquisition Act, 1960 which permits an Applicant to raise a new ground of objection not stated in Form N subject to prior leave of the Court?

[52] In the instant case, can prior leave be deemed to have been obtained by the conduct of the learned High Court Judge and assessors in proceeding to hear the new objections of the applicant not raised in Form N?

Issues Before Us

[53] The crux of the issue before us is whether this appeal is in respect of compensation and thus is not allowed pursuant to ss. 40D(3) and the proviso to s. 39(1) of the Land Acquisition Act 1960 as well as the Federal Court decisions of *Calamas Sdn Bhd (supra)* and *Syed Hussain Syed Junid & Ors (supra).*

[54] In the alternative, does this appeal raise issues of points of law in respect of the requirements of sub-s. 38(2) of the Land Acquisition Act 1960?

Majority Judgment

[55] After careful consideration of learned counsel's oral and written submissions as well as the appeal records, my brother Justice Balia Yusof and I are of the considered opinion that there are merits in this appeal. We set out our reasons below.

[56] We agree with the contention of the learned counsel that the appeal raises several points of law for the consideration of this court.

First, what is the scope and ambit of the requirement stipulated by s. 38(2) of Act 486?

[57] Section 38(2) abovementioned provides as follows:

> 38. Form and content of application, etc.
>
> (1) Any objection made under section 37 shall be made by a written application in Form N to the Land Administrator requiring that he refer the matter to the Court for its determination, [and a copy thereof shall be forwarded by the Land Administrator to the Registrar of the Court].
>
> (2) Every application under subsection (1) **shall state fully** the grounds on which objection to the award is taken, and at any hearing in Court no other grounds shall be given in argument, without leave of the Court. (emphasis added)

[58] It is a well-established principle of statutory interpretation that when the words in a statute have not acquired any technical meaning, the natural and ordinary meaning of the words should be given effect to. This principle has been well enunciated by Justice Steve Shim in the case of *PP v. Tan Tatt Eek & Other Appeals* [2005] 1 CLJ 713, as stated below.

> The primary duty of the court is to give effect to the intention of the Legislature in the words used by it. It is a well-established canon of interpretation that the intent of the Legislature is to be gathered from the words used and that if the words used have not acquired any technical

meaning, they should be deemed to have been used in their ordinary meaning. If the words of the statute are in themselves precise and unambiguous, then no more is necessary than to expound those words in their natural and ordinary sense. The words themselves alone in such cases best declare the intent of the lawgiver.

[59] It is clear that the requirement stipulated in s. 38(2) abovementioned is mandatory by the usage of the word "shall" which precedes the requirement to "state fully". The word "fully", being a non-technical term must be understood in its natural and ordinary meaning. The *Concise Oxford English Dictionary* interprets the word "fully" to mean "completely or entirely, to the fullest extent".

[60] Thus, we are of the opinion that s. 38(2) of Act 486 requires that the grounds of any objection to an award must be stated expressly and in specific terms in Form N in order to comply with the abovementioned requirement.

[61] In the instant case, the particulars in Borang N that was submitted by the applicant were in the following terms:

4. Alasan-alasan bantahan saya adalah seperti berikut:

Jumlah pampasan yang diberi untuk tanah dan bangunan yang terlibat tidak menggambarkan nilai pasaran sebenar bagi tanah dan bangunan tersebut atau dibawah harga pasaran pada masa yang berkenaan (below market value at the material time) .

[62] It is clear from the words abovementioned that the only ground of objection to the award stated in Borang N is that the amount of compensation does not reflect the current market value of the subject lots. There was no specific mention of severance or injurious affection in Borang N.

[63] We disagree with learned counsel for the applicant's contention that the ground stated above is sufficiently wide and general to include objections on the grounds of severance and injurious affection. Such an interpretation would fly in the face of the express and unambiguous intention of the Legislature that an applicant, "shall state fully" any grounds of objection to an award in Form N.

[64] The applicant may, nevertheless raise a ground not stated in Borang N, provided prior leave of the court has been obtained. This was laid down by the Federal Court in the case of *Damansara Jaya Sdn Bhd v. Pemungut Hasil Tanah Petaling* [1992] 4 CLJ 2208; [1992] 1 CLJ (Rep) 52; [1992] 2 MLJ 660, where the Federal Court had occasion to determine the ambit of s. 38(2) of the Land Acquisition Act 1960 as follows.

On a plain reading of s. 38(2) of the Act, the door is not completely shut for an objector to make a fresh claim or raise a new ground of objection to an award of the Collector in the course of the reference proceedings which he had failed to do at the inquiry before the Collector or in the

application for reference to the court. The objector must, however, obtain the leave of the court before he can do so. In view of s. 45(2) of the Act which provides:

> Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the law for the time being in force relating to civil procedure shall apply to all proceedings before the Court under this Act.
>
> The leave of the court is obtained by making separate application to the court supported by an affidavit explaining the reasons for the additional grounds of objection in accordance with Rules of the High Court 1980 for such application as a preliminary step before the hearing of the actual reference.
>
> Such application for leave will afford the Collector an opportunity to make necessary inquiries to file in reply and, where necessary, to object to the application. The additional ground should not be made, as was done here, by throwing it in the face of the court for the first time at the hearing of the reference proper which caught the Collector and the court by surprise.

[65] The above position was confirmed by the Federal Court in the case of *Sin Yee Estate Sdn Bhd v. Pentadbir Tanah Daerah Kinta* [2005] 4 CLJ 653; [2006] 1 MLJ 12, which held that the appellant, having not pleaded a claim for injurious affection was not entitled to raise the claim unless leave of the court had been asked for and granted.

[66] In light of the above established authorities, there is clearly no merit in the applicant's submission that the prior leave required by s. 38(2) of Act 486 may be deemed to have been obtained by the conduct of the learned High Court Judge and assessors in proceeding to hear the new objections of the applicant.

[67] Thus, we are of the opinion that the applicant is not entitled to raise a claim for severance and injurious affection and accordingly, we allow this appeal and set aside the decision of the learned High Court Judge in her additional award of compensation in respect of severance and injurious affection.

[68] Based on the aforesaid grounds, by majority, we accordingly allow this appeal with costs of RM15,000 for both appeals.

Hamid Sultan Abu Backer JCA (dissenting):

[69] Both appeals are in respect of the learned High Court Judge, providing an award for 'severance and injurious affection' relating to a land acquisition matter.

Preliminaries And Jurisprudence

[70] The central complaint of the appellant is that the respondent land owners did not state in Borang N – related to Land Acquisition Act 1960 (LAA 1960) the claim for 'severance and injurious affection' as one head of

grievance to protest against inadequacy of compensation before the land administrator. However, the issue of 'severance and injurious affection' principle and quantum was argued before the land administrator. The land administrator refused to make an award on that head.

[71] The learned High Court Judge took into consideration and awarded for 'severance and injurious affection'. After having read the judgment as well as the facts, I did not think the learned trial judge was wrong in principle and/or methodology to grant the award when the issues have been raised and both parties have contested it before the land administrator.

[72] On the similar facts, there are a number of decisions where court had allowed that head of the claim. For example, Her Ladyship Tengku Maimun binti Tuan Mat JCA, in the case of *Rashida Bibi & Ors v. Pentadbir Tanah Wilayah* [2007] 1 LNS 363 where this head was not raised in Borang N, Her Ladyship had allowed the claim. There is also an obligation for the respondent to challenge any grounds related to quantum and not just the purported head of claim. In addition, it must not be forgotten that from the decision of decided cases, the objection before the High Court is taken as a rehearing. For example, the Federal Court in *Malakoff Bhd & Anor v. Pentadbir Tanah, Kedah* [2004] 1 CLJ 189, had this to say:

> In this respect, the Privy Council in *Collector of Land Revenue v. Alagappa Chettiar* [1968] 1 LNS 31; [1971] 1 MLJ 43 per Lord Diplock stated at p. 44:
>
> > Although upon referring an objection to the High Court for its determination the collector is required to state the grounds on which the amount of compensation was determined, *the reference to the High Court is not in the nature of an appeal for the collector's award. It is in the nature of an original hearing in which the applicant is the plaintiff and the collector the defendant.* (emphasis is added).

[73] The LAA 1960 as far as the owners are concerned, relate to fair compensation. (See *Chung Ngiuk Chang & Ors v. The Superintendent* [2008] 1 LNS 239). For example:

(i) In *Superintendent of Lands and Surveys, Sarawak v. Aik Hoe & Co Ltd* [1966] 1 LNS 188, Suffian J stated:

> The issue, as already stated, is simple one: what was the market value of these two lots on the agreed material date 1st April 1960. In determining this amount the court must not take into consideration any disinclination on the part of the owners to part with the lots resumed not any increase in the value of the lots likely to accrue from the use to which they will be put when resumed (section 61 Land Code).

(ii) It will appear that the principles applicable are the same as that of the Indian Land Acquisition Act 1984. In analysing the Indian provision, Lord Romer sitting in the Privy Council in the case of *Vyricherla Narayana Gajapatiraju v. The Revenue Divisional Officer, Vizagapatam* [1939] AC 302 opined:

> The compensation must be determined ... by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser. The disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy must alike be disregarded. Neither must be considered as acting compulsion. This is implied in the common saying that the value of the land is not to be estimated at its value to the purchaser ... It may also be observed in passing that it is often said that it is the value of the land to the vendor that has to be estimated. This, however, is not in strictness accurate. The land, for instance, may have for the vendor a sentimental value far in excess of its 'market value'. But the compensation must not be increased by reason of any such consideration. The vendor is to be treated as a vendor willing to sell at the 'market price' ... it is perhaps desirable in this connection to say something about this expression 'the market price' ... There is not in general any market for land in the sense in which one speaks of a market for shares or a market for sugar or any like commodity. The value of any such article at any particular time can readily be ascertained by the prices being obtained for similar articles in the market. In the case of land, its value in general can also be measured by a consideration of the prices that have been obtained in the past for land of similar quality and in similar positions, and this is what must be meant in general by 'the market value' ...

(iii) In *Hajjah Halimah binte Hussain & Anor v. Collector of Land Revenue, Kuantan* [1981] 2 MLJ 12, Abdul Razak J stated:

> The issue before the learned judge was, what was the value of the land at the material date which was May 24, 1973. Value must mean market value, which in turn means the price which a willing seller, not obliged to sell might reasonably expect from a willing seller, not obliged to sell might reasonably expect from a willing purchaser with whom he was bargaining for sale and purchase of the land (*Nanyang Manufacturing Co v. CLR Johore* [1953] 1 LNS 59; [1954] MLJ 69). It is plain from the notes of evidence and submissions and from the judgment that everybody was aware that the best way of determining this amount is by looking at sales of comparable lands in the vicinity at or about the material date.

[74] The procedure to arrive at the compensation is set out in the LAA 1960 in particular First Schedule. The task to arrive at fair compensation is placed before the Land Administrator (see s. 12 LAA 1960) as well as the High Court (see Part V of LAA 1960). It is a strict statutory imposition that

the issue relating to 'quantum' affirmed by the High Court is not appealable. (See *Calamas Sdn Bhd v. Pentadbir Tanah Batang Padang* [2011] 5 CLJ 125; *Syed Hussain Syed Junid & Ors v. Pentadbir Tanah Negeri Perlis & Another Appeal* [2013] 9 CLJ 152; [2013] 6 MLJ 626). Though such strict imposition may not be constitutionally valid within the doctrine of constitutional supremacy, courts have recognised the strict imposition but have provided some concession to accommodate various methodologies to arrive at a fair market value to compensate the landowners and within these methodologies the head on 'severance and injurious affection' has emerged through our case laws and also as per First Schedule. Though the LAA 1960 does not strictly state the several heads and methodology to arrive at the quantum of compensation, the courts have recognised these heads for the purpose of a fair market value to arrive at the quantum. First Schedule stands as a guideline to arrive at a fair market value. First Schedule read as follows:

FIRST SCHEDULE
[Sections 12, 35 and 47]
PRINCIPLES RELATING TO THE DETERMINATION OF COMPENSATION

Market value

1. (1) For the purposes of this Act the term "market value" where applied to any scheduled land shall mean the market value of such land:

(a) at the date of publication in the *Gazette* of the notification under section 4, provided that such notification shall within twelve months from the date thereof be followed by a declaration under section 8 in respect of all or some part of the land in the locality specified; or

(b) in other cases, at the date of the publication in the *Gazette* of the declaration made under section 8.

(1A) In assessing the market value of any scheduled land, the valuer may use any suitable method of valuation to arrive at the market value provided that regard may be had to the prices paid for the recent sales of lands with similar characteristics as the scheduled land which are situated within the vicinity of the scheduled land and with particular consideration being given to the last transaction on the scheduled land within two years from the date with reference to which the scheduled land is to be assessed under subparagraph (1).

(1B) Where only a part of the land is to be acquired, the market value of the scheduled land shall be determined by reference to the whole land as shown in the document of title of the scheduled land and after having regard to the particular features of that part.

(1C) In assessing the market value of any scheduled land, regard shall not be had to the evidence of any sales transactions effected after the date with reference to which the scheduled land is to be assessed under subparagraph (1).

A (1D) Where the scheduled land to be acquired is held under a title for a period of years, in assessing the market value, regard may be had to the date of expiry of the lease as shown in the document of title, but regard shall not be had to the likelihood of a subsequent alienation to the person or body who is the proprietor thereof immediately before the expiry of the lease.

B (2) In assessing the market value –

(a) the effect of any express or implied condition of title restricting the use to which the scheduled land may be put; and

(b) the effect of any prohibition, restriction or requirement imposed by C or under the Antiquities Act 1976 [Act 168] in relation to any ancient monument or historical site within the meaning of that Act on the scheduled land,

shall be taken into account.

(2A) In assessing the market value of any scheduled land which is Malay D reservation land under any written law relating to Malay reservations, or a Malay holding under the Malay Reservations Enactment of Terengganu [Terengganu En. No. 17 of 1360 (A.H)], or customary land in the State of Negeri Sembilan or the State of Malacca, the fact that it is such Malay reservation land, a Malay holding, or customary land shall not be taken into account except where the scheduled land is to be devoted, after the E acquisition, solely to a purpose for the benefit of persons who are eligible to hold the land under such written law.

(2B) (Deleted by Act A999).

(2BA) In assessing the market value of any scheduled land, where the F information provided by the State Director of Town and Country Planning or the Commissioner of the City of Kuala Lumpur, as the case may be, under section 9A indicates that the scheduled land is within a local planning authority area, then the land shall be assessed by having regard to the specific land use for that land as indicated in the development plan.

G (2C) In assessing the market value of any scheduled land which but for the acquisition would continue to be devoted to a purpose of such nature that there is no general demand or market for that purpose, the assessment shall be made on the basis of the reasonable cost to the proprietor of the scheduled land of using or purchasing other land and devoting it to the same purpose to which the scheduled land is devoted, H if the Land Administrator is satisfied that this is *bona fide* intended by the proprietor of the scheduled land.

(2D) In assessing the market value of any scheduled land which is an estate land, or forms part of an estate land within the meaning of section 214A of the National Land Code [Act 56 of 1965], the market value shall I not in any way be affected by the fact that it can be sold to one person.

(3) If the market value of any scheduled land has been increased, or is currently increased, in either of the following ways, such increase shall be disregarded:

(a) an increase by means of any improvement made by the owner or his predecessor in interest within two years before the declaration under section 8 was published in the *Gazette*, unless it be proved that such improvement was made *bona fide* and not in contemplation of proceedings for the acquisition of the land;

(b) an increase by reason of the use of the land, or of any premises thereon, in a manner which could be restrained by any court, or is contrary to law, or is detrimental to the health of the inmates of the premises or to the public health.

(c) (Deleted by Act A388).

(3A) The value of any building on any land to be acquired shall be disregarded if that building is not permitted by virtue of —

(a) the category of land use; or

(b) an express or implied condition or restriction,

to which the land is subject or deemed to be subject under the State land law.

Matters to be considered in determining compensation

2. In determining the amount of compensation to be awarded for any scheduled land acquired under this Act there shall be taken into consideration the following matters and no others:

(a) the market value as determined in accordance with section 1 of this Schedule;

(b) any increase, which shall be deducted from the total compensation, in the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put;

(c) the damage, if any, sustained or likely to be sustained by the person interested at the time of the Land Administrator's taking possession of the land by reason of severing such land from his other land;

(d) the damage, if any, sustained or likely to be sustained by the person interested at the time of the Land Administrator's taking possession of the land by reason of the acquisition injuriously affecting his other property, whether movable or immovable, in any other manner;

(e) if, in consequence of the acquisition, he is or will be compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change; and

(f) where only part of the land is to be acquired, any undertaking by the State Authority, or by the Government, person or corporation on whose behalf the land is to be acquired, for the construction or

A erection of roads, drains, walls, fences or other facilities benefiting any part of the land left unacquired, provided that the undertaking is clear and enforceable.

Matters to be neglected in determining compensation

B 3. In determining the amount of compensation to be awarded for any scheduled land acquired under this Act the following matters shall not be taken into consideration:

(a) the degree of urgency which has led to the acquisition;

(b) any disinclination of the person interested to part with the land acquired;

C

(c) any damage sustained by the person interested which, if caused by a private person, would not be a good cause of action;

(d) any depreciation in the value of the land acquired likely to result from the use to which it will be put when acquired;

D (e) any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired;

(f) any outlay on additions or improvements to the land acquired, which was incurred after the date of the publication of the declaration under section 8, unless such additions or improvements

E were necessary for the maintenance of any building in a proper state of repair and unless, in the case of agricultural land, it is any money which has been expended for the continuing cultivation of crops on it.

(g) – (h) Deleted by Act A388).

F **Limitation on award**

4. Where at any inquiry made by the Land Administrator under section 12, or in any statement in writing required by the Land Administrator under subsection 11(2), any person interested has:

G (a) made a valuation of or claimed compensation for any land or any interest therein, such person shall not at any time be awarded any amount in excess of the amount stated or claimed;

(b) refused, or has omitted without sufficient reason to be allowed by a Judge, to make a claim to compensation, such person shall not at any time be awarded any amount in excess of the amount awarded

H by the Land Administrator.

[75] Part V of LAA 1960 deals with appeal mechanism from the decision of the award. Form N which is *inter alia* the subject matter of this appeal is covered by s. 38 of LAA 1960 which reads as follows:

I **Form and content of application, etc.**

38(1) Any objection made under section 37 shall be made by a written application in Form N to the Land Administrator requiring that he refer the matter to the Court for its determination.

(2) Every application under subsection (1) shall state fully the grounds on which objection to the award is taken, and at any hearing in Court no other grounds shall be given in argument, without leave of the Court.

(3) Every application under subsection (1) shall be made —

(a) if the person making it was present or represented before the Land Administrator at the time when the Land Administrator made his award, within six weeks from the date of the Land Administrator's award under section 14;

(b) in other cases, within six weeks of the receipt of the notice from the Land Administrator under section 16, paragraph 35(2)(c), subsection 58(1) or section 59 or within six months from the date of the Land Administrator's award under section 14, 35 or Part VII, whichever period shall first expire.

(4) The period of six weeks prescribed by paragraph (3)(a) and the periods of six weeks and six months prescribed by paragraph (3)(b) shall not be capable of enlargement by any Court, except in such special circumstances as the Court may think fit.

(5) On receiving any application under subsection (1) the Land Administrator shall, subject to section 39, within six months refer the matter to the Court by a reference in Form O.

(6) Where the Land Administrator has failed to make a reference to the Court within the period specified in subsection (5), the Land Administrator or any person interested may apply to the Court for an extension of the said period.

(7) Where the Land Administrator has failed to make a reference to the Court within the period specified in subsection (5) or within any extension of such period under subsection (6), the Court may, on application by any person interested deal with the objection under subsection 38(1) in such manner as it deems fit, and in order to enable the Court to do so, the Court may give such directions to the Land Administrator or to any person interested as it deems necessary or expedient, and without prejudice to the generality of this power, such directions may include a direction requiring the Land Administrator or any other person to appear before the Court to give evidence, or to produce before the Court such records, or other documents, as the Court may specify.

[76] In my view, s. 38(2) says that grounds and not methodology. First Schedule in particular cl. 2 relates to methodology in arriving at quantum of compensation. The statutory Form N also does not state any of the methodology stated in cl. 2 to arrive at the compensation. Grounds and methodologies are not one and the same. The complaint here is that the quantum of the compensation is not sufficient.

[77] On the date of hearing of this appeal, I took the view that the grounds of complaint in Borang N were sufficient to secure a fair compensation. The Borang N was worded as follows:

> Jumlah pampasan yanq diberi untuk tanah dan bangunan yang terlibat tidak menggambarkan nilai pasaran sebenar bagi tanah dan bangunan tersebut atau di bawah harga pasaran pada masa yang berkenaan (below market value at the material time).

[78] The learned Senior Federal Counsel takes a strict legalistic position that the word phrase 'severance and injurious affection' must be strictly stated in Borang N to sustain this head. I do not see why a lay public land owner who is seeking compensation for land acquisition has to state terminologies or phrases or methodologies, etc. which falls within the domain of experts, jurists, tribunals, courts, etc. when there is no strict requirement in the LAA 1960 in particular Borang N to state the phrase 'severance and injurious affection'. (See *Jerry W.A. Dusing & Anor v. Majlis Agama Islam Wilayah Persekutuan (MAIWP) & Ors.* [2017] 1 CLJ 133; [2016] 6 AMR 126).

[79] The learned Senior Federal Counsel heavily relied on the decision of the Supreme Court in *Damansara Jaya Sdn Bhd v. Pemungut Hasil Tanah Petaling* [1992] 4 CLJ 2208; [1992] 1 CLJ (Rep) 52; [1992] 2 MLJ 660. I do not see how that case will be in favour of the appellant. In that case, the issue of 'severance and injurious affection' was not raised before the land administrator at the inquiry stage or before the High Court and in such circumstance, it was argued that leave of the court was necessary. On the facts the Supreme Court held:

> On a plain reading of s. 38(2) of the Act, the door is not completely shut for an objector to make a fresh claim or raise a new ground of objection to an award of the Collector in the course of the reference proceedings **which he had failed to do at the inquiry before the Collector or in the application for reference to the court.** The objector must, however, obtain the leave of the court before he can do so. (emphasis added).

[80] The learned Senior Federal Counsel's reliance on the case of *Sin Yee Estate Sdn Bhd (supra)* does not also support the appellant's appeal. In that case, the issue of injurious affection was not raised in the inquiry and/or valuer's report, etc. On those facts, the court had this to say:

> [21] On the issue of a claim for injurious affection under the said s. 2(d), the learned Senior Federal Counsel raised **an objection to this claim as claim for injurious affection was neither pleaded in the appellants' valuation report nor argued during a trial before the learned High Court judge**. The learned Senior Federal Counsel contended that since this is a new issue brought before the Federal Court, the appellant is not entitled to raise this issue pursuant to s. 38(2) of the Act without leave of court being obtained first. (emphasis added).

[81] After having heard the submission, I dismissed the appellant's appeal. The majority have allowed the appeal. I will now *inter alia* give my reasons for dismissing the appeal.

Brief Facts

[82] The facts of the case are well articulated by the learned trial judge. It will save much judicial time to repeat the same *verbatim*. It reads as follows:

> This is Land Reference for the following cases:
>
> (i) No. 15NCVC-1-2013
>
> (ii) No. 15NCVC-20-2013,
>
> pursuant to section 37(1) of the Land Acquisition Act 1960 (hereinafter referred to as the (The Act") that arose from an objection filed by the Landowner against the award of the Respondent in respect of the compulsory acquisition of Lot 5515 GRN 110429 and Lot 4412 GRN 73171 Mukim Lenggeng, Daerah Seremban, Negeri Sembilan.
>
> These 2 Land references were heard together due to close proximity of the land in terms of sites and location (refer to plan 1 of the JPPH report). In any event the reports of the JPPH and the private valuer were made in one report respectively.
>
> It involved an acquisition of approximately a total of 4 acres for Lot 4412 and a total area of 5.368 hectare for Lot 1515.
>
> For the purpose of the References the following documents are referred to:
>
> (i) Land Reference for Lot 1515 and Lot 4412
>
> (ii) Private Valuer's Reports- Enclosure 11
>
> (iii) Private valuer'- Rebuttal- Enclosure 13
>
> (iv) Government Valuers Report- Enclosure 10
>
> The Objection:
>
> The contents of Form N states that the grounds of objection is in regards to the inadequacy of compensation which is below market value at that time.
>
> Hence the issue of determination for this court is as to the adequacy of compensation awarded by the Respondent at all material time.
>
> On 17.12.2013 the court had heard this matter and had arrived at a decision and made an order that for:
>
> A: additional compensation for the lands to be paid to the Applicant ie:
>
> (i) an additional compensation of RM290,788 be made for Lot 4212.

(ii) an additional compensation of RM214,740 be made for Lot 1515.

Total additional compensation to be paid to the Applicant is RM505,528.

B: For severance:

(iii) For Lot 4412, balance land area as per JPPH report at page 7 of 185.8303 hectares at RM200,000 per hectare comes to RM1,858,303.

(iv) For Lot 1515, balance land area as per JPPH report at page 7 of 74.1015 hectares at RM200,000 per hectare comes to RM741,015.

Total compensation for severance is RM2,599,318.

C: Injurious Affection (IA):

Balance of Lot 4212 portion A, of 111.9523 hectares at 5% reduced for IA of the market rate amounting to RM1,119,523.

Therefore Total compensation due to the Applicant is RM4,224,369.

The rest of the award of the Land Administrator is affirmed and maintained.

[83] The memorandum of appeal in Appeals No.: N-01-33-01-2014 and N-01-34-01-2014 which are similar reads as follows:

1. Yang Arif Hakim telah terkhilaf dari segi undang-undang dan fakta apabila memerintahkan Perayu/Responden membayar pampasan bagi pecah pisah tanah Lot 5641 (4412) Geran 73171, Mukim Lenggeng, Daerah Seremban, Negeri Sembilan yang terlibat dengan pengambilan balik tanah pada 24/11/2011 sebanyak RM1,858,303.00 sedangkan tuntutan tersebut tidak pernah dibangkitkan oleh Responden/Pemohon semasa siasatan dihadapan Pentadbir Tanah pada 28/6/2012;

2. Yang Arif Hakim telah terkhilaf dari segi undang-undang dan fakta apabila memerintahkan Perayu/Responden membayar pampasan bagi pecah pisah tanah Lot 5641 (4412) Geran 73171, Mukim Lenggeng, Daerah Seremban, Negeri Sembilan yang terlibat dengan pengambilan balik tanah pada 24/11/2011 sebanyak RM1,858,303.00 sedangkan Pemohon/ Responden tidak pernah membangkitkan mengenai tuntutan tersebut dalam Borang N dan keputusan ini adalah bercanggah dengan peruntukan subseksyen 38(2) Akta Pengambilan Balik Tanah 1960 [Akta 486];

3. Yang Arif Hakim telah terkhilaf dari segi undang-undang dan fakta apabila membenarkan tuntutan Responden/Pemohon supaya Perayu/ Responden membayar pampasan bagi pecah pisah tanah Lot 5641 (4412) Geran 73171, Mukim Lenggeng, Daerah Seremban, Negeri Sembilan yang terlibat dengan pengambilan balik tanah pada 24/11/2011 sebanyak RM1,858,303.00 sedangkan tuntutan tersebut adalah merupakan isu baru yang dibangkitkan oleh Responden/Pemohon semasa perbicaraan tanpa mendapat kebenaran daripada Mahkamah terlebih dahulu dan keputusan ini adalah bercanggah dengan peruntukan subseksyen 38(2) Akta 486;

4. Yang Arif Hakim telah terkhilaf dari segi undang-undang dan fakta apabila membenarkan tuntutan Responden/Pemohon supaya Perayu/Responden membayar pampasan bagi pecah pisah tanah Lot 5641 (4412) Geran 73171, Mukim Lenggeng, Daerah Seremban, Negeri Sembilan yang terlibat dengan pengambilan balik tanah pada 24/11/2011 sebanyak RM1,858,303.00 sedangkan Responden/Pemohon telah gagal membuktikan bahawa Responden/Pemohon mengalami kerosakan atau kerugian disebabkan oleh pengambilan tersebut.

5. Yang Arif Hakim telah terkhilaf dari segi undang-undang dan fakta apabila memerintahkan Perayu/Responden membayar pampasan bagi kerosakan tanah Lot 5641 (4412) Geran 73171, Mukim Lenggeng, Daerah Seremban, Negeri Sembilan yang terlibat dengan pengambilan balik tanah pada 24/11/2011 sebanyak RM1,119,523 sedangkan tuntutan tersebut tidak pernah dibangkitkan oleh Responden/Pemohon semasa siasatan dihadapan Pentadbir Tanah pada 28/6/2012;

6. Yang Arif Hakim telah terkhilaf dari segi undang-undang dan fakta apabila memerintahkan Perayu/Responden membayar pampasan bagi kerosakan tanah Lot 5641 (4412) Geran 73171, Mukim Lenggeng, Daerah Seremban, Negeri Sembilan yang terlibat dengan pengambilan balik tanah pada 24/11/2011 sebanyak RM1,119,523 sedangkan Pemohon/Responden tidak pernah membangkitkan mengenai tuntutan tersebut dalam Borang N dan keputusan ini adalah bercanggah dengan peruntukan subseksyen 38(2) Akta Pengambilan Balik Tanah 1960 [Akta 486];

7. Yang Arif Hakim telah terkhilaf dari segi undang-undang dan fakta apabila membenarkan tuntutan Responden/Pemohon supaya Perayu/Responden membayar pampasan bagi kerosakan tanah Lot 5641 (4412) Geran 73171, Mukim Lenggeng, Daerah Seremban, Negeri Sembilan yang terlibat dengan pengambilan balik tanah pada 24/11/2011 sebanyak RM1,119,523 sedangkan tuntutan tersebut adalah merupakan isu baru yang dibangkitkan oleh Responden/Pemohon semasa perbicaraan tanpa mendapat kebenaran daripada Mahkamah terlebih dahulu dan keputusan ini adalah bercanggah dengan peruntukan subseksyen 38(2) Akta 486;

8. Yang Arif Hakim telah terkhilaf dari segi undang-undang dan fakta apabila membenarkan tuntutan Responden/Pemohon supaya Perayu/Responden membayar pampasan bagi kerosakan tanah Lot 5641 (4412) Geran 73171, Mukim Lenggeng, Daerah Seremban, Negeri Sembilan yang terlibat dengan pengambilan balik tanah pada 24/11/2011 sebanyak RM1,119,523 sedangkan Responden/Pemohon telah gagal membuktikan bahawa Responden/Pemohon mengalami kerosakan atau kerugian disebabkan oleh pengambilan tersebut.

9. Yang Arif Hakim telah terkhilaf dari segi undang-undang dan fakta dalam mengeluarkan perintah bertarikh 17/12/2013 kerana perintah tersebut bertentangan dengan peruntukan Akta 486.

[84] There was one valuation report by the private valuer as well as the Government valuer. The private valuer has taken into account the issue relating to 'severance and injurious affection'. The Government valuer had dealt with it. The matter was also argued before the land administrator and it was an issue at the inquiry stage. In my view, the appellant's argument on this issue is purely technical.

[85] In this respect, learned counsel for the respondent's submission is worth repeating *verbatim*. It reads as follows:

> May it please My Lords/My Lady,
>
> 1.0 This Appeal is a Non-Starter and ought be dismissed *in limine*
>
> 1.1 With respect, this appeal is, to quote the judgment of the Federal Court in *Syed Hussain Syed Junid & Ors -v- Pentadbir Tanah Negeri Perlis* (2013) 9 CLJ 152 (at 161), "nothing more than an attempt to circumvent the salient provisions of ss. 40D and 49(1) of the Land Acquisition Act 1960, which precludes any party from appealing against the award of compensation".
>
> 1.2 The Appellants herein have cunningly attempted to circumvent the aforementioned provisions of the Land Acquisition Act 1960 by disguising this appeal as a point of law, purportedly on the ground that 'severance' and 'injurious affection' were not claimed at the initial Form N stage or during the initial inquiry proceeding before the Land Administrator.
>
> 1.3 However, at the material time during the acquisition proceedings at the High Court, the Appellant relied on their own government survey reports which referred to issues of 'severance' and 'injurious affection' AND the Appellant's counsel with their witness (a government surveyor) also submitted on 'severance' and 'injurious affection' before the High Court Judge and assessors.
>
> 1.4 The government survey reports themselves expressly admitted that there was severance of the Respondent's lands. For example, see:
>
> (i) Page 22 of the Record of Appeal (admission that the affected lots had been severed into 4 parts);
>
> (ii) Page 105 of the Record of Appeal (admission of severance of Lot 4412;
>
> (iii) Page 106 of the Record of Appeal (admission of severance of 1515;
>
> (iv) Page 107 of the Record of Appeal (admission of severance on both lots 4412 and 1515;
>
> (v) Page 109 of the Record of Appeal;
>
> (vi) Page 169 of the Record of Appeal (Government Valuer's reply); and

vii) Page 178 of the Record of Appeal (Government Valuer's reply).

1.5 It must be noted that the government valuer's report and the government valuer's reply never referred to any of the issues now raised by the Appellant in their memorandum of appeal before the High Court.

1.6 It is submitted that Form N merely states that the grounds of objection are in regards to the inadequacy of compensation which was deemed to be below the market value at the material time. The Form N is a standard form which can be found at Page 15 of the Record of Appeal. Paragraph 3 of Form N only provides a choice of 4 reasons for objection by the landowner concerned. None of these 4 reasons refer to or mention the legal principles of 'severance' or 'injurious affection'. Form N is usually filled up by the landowners concerned, who are laypersons and who would never have heard of the said legal principles. The objection is generally against the valuation of the property concerned and we hereby submit that this objection covers the said legal principles which need not be specifically referred to.

1.7 Similarly, the form filled up at the inquiry (as found at pages 16 to 21 of the Record of Appeal, would usually be filled up by the landowners concerned, who are laypersons and who would never have heard of the legal principles of 'severance' and 'injurious affection'. The objection is generally against the valuation of the property concerned - See Page 19 in the Record of Appeal, paragraph (g) Bantahan. It is again submitted that this objection covers the said legal principles which need not be specifically referred to.

1.8 With the greatest of respect, it is nonsensical for the Appellant to submit that laypersons need to specifically refer to the said legal principles of severance and injurious affection at either the Form N or inquiry stage, particularly when they are unrepresented at that material time.

1.9 In any event, the learned Judge in the instant case did consider the Appellant's objection that severance and injurious affection were not stated in the Form N (see page 205 in the Record of Appeal) before deciding to reject their objection and proceeding to consider the issues of severance and Injurious Affection ('IA'). By doing so, the learned High Court Judge had impliedly given leave of the Court as set out in Section 38(2) of the Land Acquisition Act 1960 for other grounds (severance and injurious affection) to be given in argument.

2.0 The Relevant Law

2.1 Section 40D (3) of the Land Acquisition Act 1960 reads as follows:

40D. Decision of the Court on compensation.

(1) ...

A

(2) ...

(3) Any decision made under this section is final and there shall be no further appeal to a higher Court on the matter.

2.2 Section 49 of the Land Acquisition Act 1960 reads as follows:

B

49. Appeal from decision as to compensation.

(1) Any person interested, including the Land Administrator and any person or corporation on whose behalf the proceedings were instituted pursuant to section 3 may appeal from a decision of the court to the Court of Appeal and to the Federal Court:

C

Provided that where the decision comprises an award of compensation there shall be no appeal therefrom.

2.3 The Federal Court in *Calamas Sdn. Bhd. v. Pentadbir Tanah Batang Padang* [2011] 4 CLJ 125 held that (per Hashim Yusoff FCJ)

D

It is trite law that courts must give effect to the clear provisions of the law. In the instant appeal, I do not see anything ambiguous in ss. 40D(3) and 49(1) of the Act. In view of this, I am of the view that the appellant is precluded from appealing against the order of compensation issued by the learned trial judge.

E

2.4 The Federal Court in the recent case of *Syed Hussain Syed Junid & Ors v. Pentadbir Tanah Negeri Perlis* [2013] 9 CLJ 152 held as follows:

F

While s. 49(1) of the Act allows any interested person to appeal against the decision of the High Court to the Court of Appeal, s. 40D appears to have restricted the ambit of such an appeal. Section 40D(3) of the Act clearly provides that any decision as to the amount of compensation awarded shall be final and there shall be no further appeal to the higher court on the matter.

G

3.0 Summary

3.1 Sections 40D and 49(1) of the Land Acquisition Act 1960, read together with both the Federal Court decisions referred to, clearly preclude the Appellant from appealing against the award of compensation.

H

3.2 The grounds set out in the memorandum of appeal are weak and unsustainable. We reiterate that it is nonsensical for the Appellant to submit that laypersons need to specifically refer to the said legal principles of severance and injurious affection at either the Form N or inquiry stage, particularly when they are unrepresented at that material time.

I

3.3 In any event, the grounds of decision show that the learned High Court Judge had impliedly given leave of the Court as set out in Section 38(2) of the Land Acquisition Act 1960 for the Respondent to submit on severance and injurious affection. In fact, the grounds of decision clearly reveal that the learned Judge and assessors had clearly delved into all the issues judiciously and reached the proper decision to award the Respondent additional compensation for the acquisition of their lands.

3.4 Wherefore the Applicant humbly prays that its appeal be dismissed with costs.

We are obliged, My Lords/My Lady.

[86] I find the submission of learned counsel for the respondent has merits limited for the purpose of this appeal only. As I said earlier, I do not find any error of law and fact in the application of principles and methodology relating to land acquisition by the learned trial judge. Taking a holistic view of the facts, legal principles and the decisions of courts, I do not think this is a fit and proper case for appellate intervention. In consequence, I dismissed both the appeals with costs of RM15,000.

I hereby ordered so.